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14 MAY 2007

In re Application of
Lhote et al.
Application No.: 10/564,366
PCT No.: PCT/CA04/02080
Int. Filing Date: 06 December 2004
Priority Date: 16 December 2003
Attorney Docket No.: 6222.480
For: Apparatus And Method For Pressure
Relief In An Exhaust Brake

DECISION
ON
PETITION

This is in response to the renewed petition under 37 CFR 1.47(a) filed on 26 March 2007.

DISCUSSION

In a Decision mailed on 31 January 2007, the petition under 37 CFR 1.47(a) filed on 10 July 2006 was dismissed without prejudice because

Regarding requirement (2), petitioner urges that the absence on the declaration of the signature of joint inventor Andre Lhote be excused because he allegedly refused to sign the declaration. Counsel's attention is respectfully drawn to MPEP 409.03(d)...

In support of the proposition that Mr. Lhote has refused to execute the declaration, counsel has provided evidence including a "Declaration of William C. Schrot..." Atty. Schrot refers to attached copies of letters sent to Mr. Lhote on 30 May 2006, 21 June 2006 and 05 July 2006, each of which indicates that a declaration and copy of the application are being sent and each of which requests execution and return of the declaration. However, it is not clear which (if any) of these letters were sent to Mr. Lhote's "last known address," in view of (1) the absence of an explicit statement of Mr. Lhote's last known address, and (2) the indication that the address on one parcel was corrected to 4992 Byrne Rd. Clarification as to whether any of the letters were sent to Mr. Lhote's "last known address" is required. Atty. Schrot also refers to Exhibit H, a copy of an e-mail from Ryan Marander to Joe Berenato indicating that

We have now had a response from Andre Lhote regarding a copy of a declaration for his signature as co-inventor for Pacbrake's Pressure Relief Brake US patent application. This is your reference number 6222.480. Andre returned the express package you originally sent to him on May 30, 2006 and gave it to Cathy Hailey, Pacbrake's purchasing manager. When Andre Lhote handed the package to Cathy his words were, "I can't sign this."

As stated in the excerpt from MPEP 409.03(d) *supra*, "the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted." In view of this practice, a statement from Cathy Hailey would be appropriate. For all of the reasons described, it would not be appropriate to conclude at this time that Andre Lhote has "refused" to execute the application within the meaning of 37 CFR 1.47(a); as such, requirement (2) has not been satisfied.

Regarding requirement (3), the petition does not appear to include an explicit statement of the last known address of Mr. Lhote. Though the "Declaration of William C. Schrot..." refers to a "corrected address," the petition does not clearly indicate whether this address, or some other address, is the "last known address." Accordingly, requirement (3) has not been satisfied.

Regarding **requirement (2)**, the evidence of record (including that presented with the instant renewed petition) is sufficient to establish that Mr. Lhote has refused to execute the application within the meaning of 37 CFR 1.47(a).

Regarding **requirement (3)**, petitioner has provided an explicit statement of Mr. Lhote's last-known address.

DECISION

The petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

The application is being returned to the International Division for processing as the U.S. National Stage of the above-identified international application. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **12 January 2006**.



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